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December 12, 2003

***NOTICE OF EX PARTE  
PRESENTATION***

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12th Street, SW, Room TW B204  
Washington, DC 20554

**Re: Federal-State Joint Board on Universal Service CC Docket 96-45**

Dear Ms. Dortch:

The attached written *Ex Parte* Presentation concerning the above-referenced proceeding was submitted to the members of the Federal-State Joint Board, by the undersigned on behalf of ALLTEL Communications, Inc.

In accordance with FCC Rule 1.1206(b)(1), this Notice of *Ex Parte* Presentation and a copy of the referenced *Ex Parte* Presentation are being filed with you electronically for inclusion in the public record. Should you have any questions, please contact me at (202) 783-3970

Sincerely,

\_\_\_\_\_/s/  
Glenn S. Rabin  
Vice President  
Federal Communications Counsel  
ALLTEL Communications, Inc.

Enclosure

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**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20054**

In the Matter of	)	
	)	
Federal-State Joint Board	)	CC Docket No. 96-45
On Universal Service	)	
_____	)	

**WRITTEN EX PARTE PRESENTATION OF  
ALLTEL COMMUNICATIONS, INC.**

ALLTEL Communications, Inc. ("ALLTEL") hereby submits these ex-parte comments on selected issues before the Joint Board crucial to the future of the universal service fund and the fulfillment of the universal service principles embodied in the Telecommunications Act of 1996. The Commission asked the Joint Board to review the rules relating to high cost support in study areas where Competitive Eligible Telecommunications Carriers ("CETC") are providing service, rules relating to support for second access lines and to examine the current process and standards for designating CETCs.<sup>1</sup> ALLTEL will specifically address the issues related to the public interest standard requirements for CETC designation and whether limiting support to primary lines advances the goals of universal service.

Congress envisioned universal service as the framework to deliver quality communications services at affordable rates to consumers in rural and high-cost areas.

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<sup>1</sup> *Federal-State Joint Board on Universal Service*, CC Docket 96-45, FCC 02-307, 17 FCC Rcd. 22642, *Order* (rel. Nov 8, 2002).

Under Section 254 of the Communications Act of 1934 as amended (the "Act"), Congress obligated the Joint Board and the FCC to abide by enumerated bedrock principles when setting universal service policies, including: the availability of quality services at just, reasonable and affordable rates; access to advanced services in all regions of the Nation; and ensuring that consumers in rural and high-cost areas have access to telecommunications services that are comparable in quality and price to services provided in urban areas.<sup>2</sup> Congress not only contemplated designation of multiple CETCs within a market, to fulfill these principles, but, at least with respect to non-rural high cost areas, affirmatively required the designation of CETCs. Consequently, the CETC designation requirements listed in Section 214(e) of the Act are not limited to ILECs or wireline services but are technology neutral and can be satisfied by any telecommunications provider that makes the supported services available to subscribers in high cost areas. Universal service reform must follow the core principles established in Section 254 of the Act and must be progressive enough to encompass future technologies and services that are capable of delivering the supported services potentially at lower costs and with greater efficiencies.

ALLTEL supports the principles identified by Congress that universal service reform should focus on providing consumer choice among competitive, reliable and affordable market driven product and service offerings on a technology neutral basis. In light of the evolution of technology and ever changing consumer preferences, the complement of service offerings required to receive universal service support should not be determined solely by reference to traditional ILEC services.

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<sup>2</sup> See 47 U.S.C. 254(b).

Nor should universal service be reformed in a way that increases regulatory burdens on CETCs, or that eliminates the ability of state commissions and the FCC to redefine rural study areas. Any such reforms will stifle competition and inhibit the deployment of new telecommunications technologies in high-cost areas, resulting in the availability of fewer and more costly services for rural consumers contrary to the core principles delineated in the Act.

ALLTEL's various subsidiaries and affiliates provide wireline local exchange services, interexchange services, wireless services, Internet services and digital subscriber line services. ALLTEL provides wireline local services to approximately 3.0 million subscribers in 15 different states in rural and suburban markets, and receives universal service funding for some of its properties that operate in high-cost areas. ALLTEL provides wireless services to approximately 8.0 million subscribers in 24 states, and has received CETC designation in 4 of those states. ALLTEL is seeking or awaiting confirmation of CETC designations in 10 additional states.

### **The Public Interest Standard**

Among the key issues before the Joint Board is the determination of the appropriate public interest standards for state commissions to follow when designating CETCs. The Joint Board should ensure that any standards or specific requirements for CETC designations do not inhibit rural consumers' ability to choose among services comparable in both quality and price to consumers in urban areas. ALLTEL encourages the Joint Board to consider the availability of multiple carriers, products and services in rural areas – the very benefits competition brings - as the most significant criteria for determining whether CETC designations are in the public interest. On the other hand, the Joint Board should not burden CETCs with additional regulations, increased reporting requirements or complicate the ability of state commissions and the FCC to redefine rural study areas. The costs of these additional regulatory burdens will ultimately be born

by rural consumers, preventing them from receiving telecommunications services that are comparable in service and price to those offered to urban consumers as required by Section 254 of the Act.

Wireline carriers and various wireline industry trade associations argue that the establishment of uniform public interest standards are needed to ensure that public interest determinations of the state commissions are consistent. Indeed, certain ILECs have asked the Joint Board to essentially impose existing wireline regulation on all CETCs, and in particular, wireless carriers, as a requirement for CETC designation in direct contravention of Congress' mandate in Sections 214 and 254 of the Act. These sections set forth the requirements that all common carriers, regardless of technology, must satisfy in order to become designated as CETCs and plainly state that carriers seeking to be designated as CETCs must: (1) "offer the services that are supported by the federal universal service mechanisms under section 254(c), either using its own facilities or a combination of its own facilities and resale of other carrier's services (including services offered by another eligible telecommunications carrier); and (2) advertise the availability of such services and the charges therefore using media of general distribution."<sup>3</sup> The specific services the Joint Board and the FCC have designated for support include: voice grade access to the public switch network, local usage, dual tone multi-frequency or a functional equivalent, single-party service, access to emergency services, access to operator services, access to interexchange service, access to directory assistance and toll limitation for qualifying low income consumers.<sup>4</sup>

ALLTEL sees no need for the Joint Board to expand the requirements for CETC designation beyond those already established. Carriers offering service through different

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<sup>3</sup> 47 U.S.C. §54.214(e).

technologies are able to satisfy the existing requirements and be designated as CETCs, thereby promoting competition in rural markets. This competitive environment presents rural consumers with additional choices in providers and affordable products and services, thereby fulfilling the key objectives of universal service.

The goals of the Act are to "promote competition and reduce regulation in order to secure lower prices and higher quality services for American telecommunications consumers and encourage the rapid deployment of new telecommunications technologies." Imposing additional service or reporting requirements on CETCs would contradict these stated goals. Rather than burdening CETC applicants with additional regulatory requirements, the increased competition that results from designating multiple CETCs in a service area should trigger the elimination of regulatory oversight for all carriers, including the incumbent LEC as envisioned by the Act.

Some ILECs argue that additional CETCs should be held to all of the same regulations that apply to ILECs. These ILECs confuse CETC requirements with ILEC regulations. Specific regulations have been established and apply to ILECs in the state and federal jurisdictions, while other specific regulations have been established and apply to wireless carriers who operate in a competitive market place. Separate and apart from these specific regulations, the Act established requirements that all carriers must satisfy in order to be designated as a CETC. It is only these specific CETC requirements that should be relevant to CETC designation. The attempts of these ILECs to create additional CETC requirements essentially imposing existing ILEC regulations on other CETCs, is, at best, an effort to prevent competitive expansion into rural markets. FCC rules provide that wireless service qualifies for CETC designation.<sup>5</sup> There are inherent differences

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<sup>4</sup> 47 C.F.R. 54.101(a).

<sup>5</sup> See *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, FCC 97-157, 12 FCC Rcd. 8776, *Report and Order*, (May 7, 1997).

between wireline and wireless service both as to technology and as to extent of regulation. The Joint Board and the FCC established the nine services required to be offered by all CETCs.<sup>6</sup> Wireless and wireline carriers can clearly provide these services. The benefit that will accrue to consumers from wireless carriers' CETC designation is not that they will have another ILEC-like carrier to choose from to meet their communications needs, but rather that they will have a variety of additional services and providers from which to choose. Certain consumers will prefer the benefits of mobility and enhanced local calling areas over the benefits offered by traditional ILEC services.

Carriers seeking CETC designation should not be subject to additional regulatory burdens beyond the requirements set forth under the Act. Like any other CETCs, alternative CETCs are required annually to certify that all universal service support provided to them will be used only for the provision, maintenance, and upgrading of facilities for which the support is intended pursuant to 47 C.F.R. 54.904 of the Commission's rules. This is exactly the same certification that ILECs make to the Commission on an annual basis. There is no basis or need for requiring more onerous conditions on alternative CETCs.

It would be ill advised to impose additional regulatory burdens on wireless carriers who compete in a highly competitive market place. The Michigan Public Service Commission's ("MPSC") September 11, 2003 Order approving ALLTEL's application for CETC designation in Michigan, addressed a similar argument presented by opposing parties. In that proceeding, rural ILECs argued that ALLTEL should be subject to the same regulations as ILECs<sup>7</sup>. The MPSC rejected these arguments, stating:

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<sup>6</sup> 47 U.S.C. §54.214(e).

<sup>7</sup> *In The Matter of the Application of ALLTEL Communications, Inc., For Designation as an Eligible Telecommunications Carrier Pursuant to Section 214(e)(2) of the Communications Act of*

In response to the argument that wireless service providers are not subject to the same regulations designed to protect customers, the Commission finds sufficient protection for customers in their right to choose not to use wireless service and to choose from whom to take service. To the extent that the opposing parties are concerned about the effects on themselves of competition from wireless carriers, the Commission does not agree that the public interest requires that they be protected from competition.

Certain ILECs also argue that the expansion of competition does not justify a finding of public interest, however the promotion of competition must be a key factor when making a public interest determination. "Competition" is a proxy for a vital marketplace that will produce increased infrastructure deployment and additional consumer choices for new service offerings over multiple technologies at competitive retail prices in rural America. Many rural areas will not attain the benefits of competition without universal service support for alternative CETCs. The expanded regulatory proposals of the ILECs are nothing more than an attempt to insulate themselves from competition in their service territories. ALLTEL agrees with the MPSC finding that the public interest does not require that ILECs be protected from competition.<sup>8</sup>

Subscribers in high cost areas should not be deprived of the benefits provided by wireless service, including larger calling scopes and mobility. Wireless service provides rural and low-income consumers a variety of calling scopes and rate plans to choose from in order to satisfy their individual communications needs. The public interest is most definitely served by promoting access to competitive alternatives for consumers.

Section 214(e)(5) of the Act provides a mechanism whereby the state commissions and the FCC can redefine a rural study area for purposes of CETC designation. ILECs are asking the Joint

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1934, Before the Michigan Public Service Commission, Case No. U-13765, Opinion and Order, September 11, 2003, page 12.

<sup>8</sup> *Id.*

Board to eliminate this provision and require all carriers seeking CETC designation to serve the entire existing study area of the rural ILEC. The ILECs allege that because they receive universal service support based on average costs per study area, wireless CETCs can "pick and choose" which areas to serve to maximize their universal service support. Wireless carriers are licensed to serve specific geographic areas, which do not always correspond to ILEC study areas. ALLTEL supports the redefinition of rural study areas to the extent wireless CETCs are not licensed to serve the entire rural study area and are willing to serve all consumers located throughout their licensed geographic area. If modification of existing study area boundaries for CETC designation is prohibited, then wireless carriers would be precluded from CETC designation for those study areas where their license does not overlap the entire ILEC study area. This would be detrimental to the expansion of competition in rural markets, which is a key objective of the Act.

In addition, the MAG Order permitted rural carriers to disaggregate their universal service support to protect against any "pick and choose" tactic. The MAG Order allowed rural carriers to disaggregate and target their per-line universal service to the high cost areas of their service territory.<sup>9</sup> The Commission in its MAG Order concluded that "[d]isaggregation allows incumbent carriers to target explicit universal service support to regions within a study area that cost relatively more to serve, ensuring that a competitive entrant receives the targeted support only if it also serves the high-cost region."<sup>10</sup> The opportunity for rural ILECs to disaggregate and target their per line support below the study area level, combined with ALLTEL's proposal to limit redefinition of ILEC study areas only where the wireless carrier is not licensed to serve a portion of such study area, will protect the ILEC from any alleged "pick and choose" scheme.

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<sup>9</sup> *In the Matter of Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, CC Docket No. 00-256, FCC 01-304, released November 8, 2001 at ¶143. (Hereinafter "MAG Order").

<sup>10</sup> *Id.* at ¶144.

ALLTEL supports the redefinition of rural study areas where the wireless CETC is willing to serve all customers throughout its entire licensed area. Such redefinition would only apply to the extent that the wireless carrier is not licensed to provide service in a portion of the ILEC's study area. By accepting all CETC requirements throughout their entire licensed area, wireless carriers are offering their services to the widest possible area and are not targeting areas for the purpose of maximizing universal service support as alleged by the ILECs.

### **Primary Line Restriction**

A restriction of universal service support to "primary lines" in order to limit the funding requirements needed to support the universal service program is also under construction by the Joint Board. The term "primary line," which once had a distinct meaning in reference to wireline service, is quickly becoming less relevant with the continuous advances in telecommunications technologies and the proliferation of wireless services. Any specific universal service reform that only applies to current technologies and uses obsolete metrics, such as "primary lines," will soon become outdated and irrelevant. Universal service reform must be progressive to ensure its relevance to the emerging marketplace and the provision of choice in service offerings. In this connection, ALLTEL notes two recent state decisions in opposition to any primary line restrictions. In Colorado, the state commission has expanded funding from the state fund to all lines and not just primary lines.<sup>11</sup> Similarly, in Illinois, a state court of appeals overruled a state commission decision limiting support to primary lines finding no support for the limitation<sup>12</sup>.

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<sup>11</sup> *In the Matter of Proposed Amendments to Rules 7.2.1.2 and 9.4 of the Rules Concerning the Colorado High Cost Support Mechanism*, 4 CCR 723-41, Adopted October 16, 2002.

<sup>12</sup> *Harrisonville Tel. Co. v. Ill. Commerce Comm'n*, 2003 Ill. App. LEXIS 639 (Ill. App. Ct., May 23, 2003).

ALLTEL opposes any "primary line" limitation on universal service support for carriers serving high cost areas in rural markets. A primary line restriction would be detrimental to rural areas because it would discourage investment, is contrary to the principles listed in Section 254(b) of the Act and it would be extremely difficult to administer.

Universal service support is provided to carriers for the deployment of network connectivity and services in high cost areas. Limiting universal service support to primary lines will inhibit investment in rural areas because carriers would only receive support for a portion of their network in high-cost areas. Reduction in rural investment will result in diminished consumer choice for rural consumers. This outcome neither promotes nor advances the goals of universal service.

Congress' core principles for universal service reference neither "primary lines" nor "households." Rather, the Act speaks in terms of "consumers" of telecommunications services. As mentioned above, any policy that limits universal service support to primary lines will result in diminished services and connectivity to rural consumers of all varieties.

Primary Line limitations will also likely prove unworkable from an administrative standpoint. The term is obsolete and any attempt to standardize its meaning based on customers, households, primary residences or any other category would be arbitrary, subject to "gaming", and would have a detrimental impact on consumers in high-costs areas. The definition of primary lines would be even more difficult when consumers subscribe to both wireline and wireless services. The determination of which carrier provides the "primary line" when the consumer receives service from more than one CETC would be impossible to determine in an equitable and competitively neutral manner. Any presumption that the one carrier that provides the "primary line" is entitled exclusively to the support would be anti-competitive and contrary to the Act's goal

of promoting competition. The Commission acknowledged this difficulty in its MAG Order when it declined to adopt different subscriber line charges for primary/non-primary lines.<sup>13</sup> The Joint Board must also take into consideration the increased costs all CETCs will incur if they have to identify primary lines with the benefits that limiting universal service support to primary lines will have on the fund. While it is certain that all additional costs will be borne by consumers, there are no guarantees that limiting universal service support to primary lines will be an effective means of controlling the size of the fund until the issue of contribution methodology is squarely addressed. Until it is proven that the benefits of limiting support to primary lines outweigh the additional costs imposed on CETCs, the Joint Board should not adopt this limitation.

### **Conclusion**

ALLTEL argues that imposing ILEC-like regulations on all CETCs is inappropriate and contrary to the goals of the Act. The ILEC proposals to regulate all CETCs as ILECs is in reality an effort to prevent the expansion of viable competition into rural markets and to provide consumers with real choices in telecommunication services.

ALLTEL urges the Joint Board not to be misled by the "poison pill" proposals of the ILECs to redefine the requirements for CETC designation to match existing ILEC regulation. Universal service support is intended to enhance service options and availability in high-cost areas regardless of the technology used to deliver those services. The Joint Board must recognize that the proposals made by the ILECs will not enhance universal service but will only serve to insulate

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<sup>13</sup> MAG Order at ¶47.

them from competition. For these reasons the Joint Board should maintain the existing CETC designation requirements.

Respectfully Submitted,

ALLTEL Communications, Inc.

By:                                 /s/                                  
Glenn S. Rabin

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Dated: December 12, 2003

## **CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Written Ex Parte Presentation of ALLTEL Corporation, Inc. was served on this 12th day of December 2003 by electronic delivery or first class, postage prepaid mail to the persons listed below.

By:                     /s/                      
Sharron V. Turner

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